909.

SUPREME COURT OF THE UNITED STATES.

No. 66.

LEMUEL SMITH ET AL., PLAINTIFFS IN ERROR,

VERSUS

JAMES W. BREEDLOVE AND CO.

ERROR TO CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF WEST TENNESSEE.

INDEX.

	Original.	Print.
Preamble and parties' names, &c.	2	1
Writ and endorsements	2	2
Declaration and endorsements	3	3
Order for defendants to plead, &c.	6	4
Verdict and judgment	7	4
Motion to set aside the same	7	4
Order granting writ of error	7	5
Bond for prosecution	7	5
Certificate of clerk	9	5
Citation and service	10	6
Writ of Error	11	6

District of West Tennessee, to wit:

[*Preamble.*]

Pleas before the honorable John McLean and Morgan W. Brown, judges of the seventh circuit court of the United States of America, in and for the district of West Tennessee, at the court-house in the town of Nashville, at the September term of said court, in the year one thousand eight hundred and thirty-four, between

James W. Breedlove and Peter Hardy, merchants, trading under the firm style of J. W. Breedlove and Co., *plaintiffs*, and Lemuel Smith, William O. Perkins, jr., and Peter Perkins, and the same Peter Perkins, adm'r, &c. of Thomas Hardin Perkins, deceased, *defendants*. } *Parties.*

Be it remembered, that heretofore, to wit, on the 3d day of July, in the year one thousand eight hundred and thirty-four, a writ of *capias ad respondendum* was issued from the office of the clerk of said court, which is in the words following, to wit:

[L. S.] The President of the United States of America to the Marshal of West Tennessee district, to wit, greeting:

You are hereby commanded to take Lemuel Smith, William O. Perkins, jr., and Peter Perkins, and the same Peter Perkins, administrator of all and singular the goods and chattels, rights and credits, which were of Thomas Hardin Perkins, deceased, citizens of the State of Tennessee, if they be found within your district, and them safely keep, so that you have their bodies before the judges of our circuit court of the United States, in the seventh circuit for the district of West Tennessee, at Nashville, on the first Monday in September next, then and there to answer James W. Breedlove and Peter Hardy, merchants, trading under the firm style of J. W. Breedlove and Co., citizens of the State of Louisiana, in a plea of trespass on the case, to their damage seven thousand dollars, and have then there this writ. Witness John Marshall, Esq., Chief Justice of the Supreme Court of the United States, this first Monday in March, in the year 1834, and of the independence of the United States the fifty-eighth.

JN. A. McNAIRY, *Clerk.*

[*Endorsements and Marshal's return.*]

Endorsements.—"Issued July 3d, 1834." "Came to hand the 11th July, 1834.—Executed on Lemuel Smith the 13th July, 1834. H. Bradbury, D. M." "Executed on William O. Perkins, jr. and Peter Perkins, and the same Peter Perkins, administrator of Thomas H. Perkins, deceased, and served them with a copy of the declaration, 7th July, 1834.

S. B. MARSHALL, M. W. T."

With the writ aforesaid there issued a declaration, which is in the words following, viz.:

970.

"Circuit court of the United States, district of West Tennessee, September term, 1834.

[*Declaration.*]

James W. Breedlove and Peter Hardy, merchants, trading under the firm name of James W. Breedlove and Co., citizens of the State of Louisiana, by attorney, complain of Lemuel Smith, William O. Perkins, jr., and Peter Perkins, and the same Peter Perkins, as administrator of all and singular the goods and chattels, rights and credits, which were of Thomas Hardin Perkins, deceased, citizens of the State of Tennessee, in custody, &c., in a plea of trespass on the case; for that whereas, heretofore, to wit, on the first day of September, 1833, in the district aforesaid, in consideration that the said James W. Breedlove and Peter Hardy, for the accommodation and at the special instance and request of the said Lemuel Smith, William O. Perkins, jr., Peter Perkins, and Thomas Hardin Perkins, in his lifetime, would accept a certain bill of exchange in writing, bearing date the day and year aforesaid, and made and drawn by the said Lemuel, William O., Peter, and Thomas Hardin, on the said plaintiffs, and whereby the said Lemuel, William O., Peter, and Thomas Hardin required the said plaintiffs, eight months after the date thereof, to pay to D. Hardeman, or order, six thousand dollars, and would deliver the same, so accepted, to the said Lemuel, William O., Peter, and Thomas Hardin, in order that they might negotiate the same for their own proper use, benefit, and behoof, they, the said Lemuel, William O., Peter, and Thomas Hardin, undertook, and then and there faithfully promised the said plaintiffs, to provide money for the payment of the said bill of exchange, when the same should become due and payable, and to indemnify and save harmless the said plaintiffs from any loss or damage, by reason of their acceptance of the said bill of exchange as aforesaid. And the plaintiffs aver that they, confiding in the said promise and undertaking of the said Lemuel, William O., Peter, and Thomas Hardin, did afterwards, to wit, on the day and year aforesaid, at the district aforesaid, accept the said bill of exchange, and deliver the same so accepted to the said Lemuel, William O., Peter, and Thomas Hardin, for the purpose aforesaid, and that afterwards, and before the time for the payment of the aforesaid bill of exchange, the said Thomas Hardin died, of whose estate the said Peter is administrator, as aforesaid; and although the said bill of exchange so accepted was afterwards, to wit, on the day and year aforesaid, at the place aforesaid, negotiated by the said Lemuel, William O., Peter, and Thomas Hardin, for their own proper use and benefit, and the same hath been long since due and payable. Yet the said Lemuel, William O., Peter, and the said Thomas Hardin, in his lifetime, and his administrator, since his death, not regarding their said promise and undertaking, did not, nor would provide for the payment of the said bill of exchange, when the same became due and payable, nor indemnify or save harmless the said plaintiffs from any loss or damage, by reason of their acceptance of the said bill of exchange, as aforesaid, but wholly neglected and refused so to do; by means whereof, the said plaintiffs, as such acceptors of

the said bill of exchange, as aforesaid, afterwards, to wit, on the 4th day of May, 1834, at, to wit, the district aforesaid, were called upon and forced to pay, and did then and there pay, to one , the holder thereof, the said sum of money, in said bill of exchange specified, whereby the said defendants, Lemuel, William O., and Peter, and the same Peter, as administrator, as aforesaid, became liable to pay to the plaintiffs the said sum of money, and being so liable, undertook and promised to pay the same to the plaintiffs, whenever they should be thereunto afterwards requested. Yet the said defendants, although often requested so to do, have not as yet paid the said sum of money, or any part thereof, to the plaintiffs, or either of them, but to pay the same, or any part thereof, have hitherto wholly neglected and refused, and still do neglect and refuse, to the plaintiffs' damage seven thousand dollars; and, therefore, they sue by their attorney.

WINCHESTER."

[*Marshal's return on declaration.*]

Endorsements, to wit:

"I served the defendant, L. Smith, with a copy of the within declaration, on the 13th July, 1834.

H. BRADBURY, D. M."

"I served the balance of defendants with a copy of the within declaration, 7th July, 1834.

S. B. MARSHALL, M. W. T."

[*Order for defendants to plead, &c.*

And now, to wit, at the term in the caption mentioned, being the first day of September, 1834, the defendants having failed to enter their appearance herein, and plead to the plaintiffs' said action, it was ordered by the court, that unless they should appear and plead to the plaintiffs' said action, on or before the sixth day of September, that a judgment by default would be entered against them.

And afterwards, to wit, on the 8th day of September, 1834, the following proceedings were had in said cause, to wit:

[*Verdict and judgment.*]

"The plaintiffs, by attorney, appear, and the defendants make default: therefore, a jury is called to inquire of damages, to wit, Joseph T. Elliston, Michael C. Dunn, William Williams, William Armstrong, Robert H. M'Ewen, James Gordon, Robert Gibson, William Nichol, John Thompson, Mimucan H. Howard, Elihu S. Hall, and Joel L. Jones, who, being elected, tried, and sworn to inquire of damages, say they assess the plaintiffs' damages at six thousand four hundred and five dollars.

Therefore, it is considered that the plaintiffs recover of the defendants, the damages, &c."

[*Motion to set aside verdict and judgment.*]

And afterwards, to wit, on the 12th day of September, in the year aforesaid, "came the parties, by their attornies, and the defendants, by attorney, move the court to set aside the verdict and judgment entered in this cause, on the eighth instant, which motion, after argument upon the same, is overruled."

And at a subsequent day of said term, to wit, the 19th day of September, 1834.

[*Order for writ of error.*]

"The defendants, by attorney, appear and pray a writ of error to the Supreme court of the United States, to be held on the first Monday in January next; and said defendants having given bond and security, as required by law, the same is granted."

Which bond is in the words following, to wit:

[*Bond.*]

Know all men, by these presents, that we, Lemuel Smith, William O. Perkins, jr., and Peter Perkins, and the same administrator of all and singular, the goods and chattels, rights and credits, of Thomas Hardin Perkins, deceased, Daniel P. Perkins, Richard

[*Bond continued.*]

Christmas, and Thomas H. Perkins are held and firmly bound unto James W. Breedlove and Peter Hardy, merchants, trading under the firm style of J. W. Breedlove, & Co., in the penal sum of twelve thousand eight hundred and ten dollars, for the payment of which, well and truly to be made, we bind ourselves, our, and each of our heirs, executors, administrators and assigns, jointly, severally, and firmly by these presents. Sealed with our seals, and dated this 18th day of September, A. D., 1834.

The condition of the above obligation is such, that whereas a certain action was prosecuted in the circuit court of the United States, for the district of West Tennessee, wherein the said James W. Breedlove and Peter Hardy, merchants, &c., were plaintiffs, and the said Lemuel Smith, William O. Perkins, jr., and Peter Perkins, and the same administrator of all and singular, the goods and chattels, rights and credits which were of Thomas Hardin Perkins, deceased, were defendants; upon the trial of which action, judgment was rendered against the defendants, on the 8th day of September, 1834, for the sum of six thousand four hundred and five dollars, besides costs; from which judgment the said defendants prayed and obtained a writ of error to the Supreme Court of the United States. Now, if the said defendants shall proseeute said writ of error, to effect or answer all damages and costs, if they fail to make good their plea, then the foregoing obligation to be void, otherwise, to remain in full force and effect.

(Signed)

LEMUEL SMITH, [SEAL.]
WILLIAM O. PERKINS, Jr. [SEAL.]
PETER PERKINS, [SEAL.]
D. HARDEMAN, [SEAL.]
DANL. P. PERKINS, [SEAL.]
R. CHRISTMAS, [SEAL.]
THO. H. PERKINS, [SEAL.]

[*Certificate.*]

United States of America:

District of West Tennessee, to wit:

I, Nathaniel A. McNairy, clerk of the circuit court of the United States for the seventh circuit, in the district of West Ten-

nessee, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned.

In testimony whereof, I have hereunto set my name, and affixed the seal of said court, this 20th day of October, in the year of our Lord one thousand eight hundred and thirty-four, and in the 59th year of our independence.

[SEAL.]

N. A. McNAIRY.

The United States, seventh circuit:

District of West Tennessee.

To James W. Breedlove and Peter Hardy, merchants, trading under the name and style of James W. Breedlove & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the seventh circuit, in the district of West Tennessee, wherein Lemuel Smith, William O. Perkins, jr., and Peter Perkins, and the same Peter Perkins, administrator, &c., of Thomas Hardin Perkins, dec'd, are plaintiffs in error; and James W. Breedlove and Peter Hardy, merchants, trading under the name and style of James W. Breedlove & Co., are defendants, to show cause, if any there be, why the judgment rendered against the said Lemuel Smith, William O. Perkins, jr., and Peter Perkins, and the same Peter Perkins, administrator, &c., of Thomas Hardin Perkins, dec'd, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John McLean, Associate Justice of the Supreme Court of the United States.

JOHN McLEAN.

Davidson county, ss.

On this 20th day of September, in the year of our Lord one thousand eight hundred and thirty-four, personally appeared before me, Samuel B. Marshall, and, being duly sworn, deposeth and saith, that on this day he delivered a true copy of the above citation to James W. Breedlove, a member of the firm above mentioned, one of the plaintiffs.

S. B. MARSHALL.

Sworn to and subscribed before me, on the day above written.

N. A. McNAIRY, *cl'k.*

The United States, ss.

[SEAL.]

The President of the United States to the judge of the circuit court of the United States, for the district of West Tennessee, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which in the said circuit court, before you or some of you, between James W. Breedlove and Peter Hardy, merchants, trading under the firm style of James W.

972.

Breedlove & Co., plaintiffs, and Lemuel Smith, William, O. Perkins, jr., and Peter Perkins, and the same Peter Perkins, administrator of all and singular, the goods and chattels, rights and credits, which were of Thomas Hardin Perkins, dec'd, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected by the said Supreme Court, may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable John Marshall, Chief Justice of the said Supreme Court, the first Monday of January, in the year of our Lord one thousand eight hundred and thirty-four, and of the independence of the United States the fifty-eighth.

N. A. McNAIRY,
Clerk of the circuit court, for the district of West Tennessee.

Allowed.

JOHN McLEAN,
Justice Sup. Court U. States.

September 19th, 1834.